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No. 126

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

COMMISSIONER OF INTERNAL REVENUE,
Petitioner

v.

PHILADELPHIA TRANSPORTATION COMPANY

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR THE RESPONDENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949. No. 126.

Commissioner of Internal Revenue, Petitioner

v.

Philadelphia Transportation Company.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR THE RESPONDENT.

OPINIONS BELOW.

The opinion of the Tax Court (R. 17-37) is reported at 9 T. C. 1018. The opinion of the Court of Appeals (R. 97-100) is reported at 174 F. 2d 255.

JURISDICTION.

The judgment of the Court of Appeals was entered on March 21, 1949 (R. 101). A petition for a writ of certiorari was filed on June 16, 1949, and was granted on October 10, 1949. The jurisdiction of this Court is conferred by Title 28 U. S. C., Section 1254(1).

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QUESTIONS PRESENTED.

1. Where an accrual basis taxpayer upon incorporation in 1940 issued its mortgage bonds dated January 1, 1939, and maturing January 1, 2039, in compliance with a plan of reorganization approved by the District Court under Section 77B of the Bankruptcy Act, are amounts paid in 1940 to redeem interest coupons for 1939 deductible in 1940 as accrued interest under the Internal Revenue Code?

2. Where the Commissioner of Internal Revenue does not disallow a deduction claimed on a taxpayer's federal income tax return within the statutory period for assessing additional income tax, may he thereafter, upon examination of the taxpayer's return for a later taxable year, disallow the deduction and reduce the loss carried forward to such later year under the Internal Revenue Code?

STATUTES AND REGULATIONS INVOLVED.

The statutes and regulations involved may be found in the Appendix, *infra,* pp. 33 and 34.

STATEMENT OF THE CASE.

QUESTION 1.

The Philadelphia Rapid Transit Company (one of Respondent's predecessors) operated a street railway system in Philadelphia under long-term leases. In 1934 it filed a voluntary petition under Section 77B of the Bankruptcy Act (R. 19). Thereafter two plans of reorganization were filed, but because of objection of interested parties, neither was approved by the Court. Finally a third plan known as the Second Revised Plan was filed on

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December 1, 1937, and amended on June 1, 1938, and November 15, 1938. This Plan was approved by the Court on November 14, 1939 (R. 19, 39).

It provided for the consolidation and merger of sixty-five of the corporations previously constituting the Philadelphia Rapid Transit Company system, and pursuant thereto an Agreement of Consolidation and Merger was adopted by these corporations (R. 22). The Plan and Agreement provided that Respondent, Philadelphia Transportation Company, a new corporation (which will be referred to in this Brief as the taxpayer) would result from the merger and consolidation of the old companies (R. 22). It also provided that the taxpayer would issue its Consolidated Mortgage Bonds, dated and bearing interest from January 1, 1939 and maturing January 1, 2039, to holders of stock and stock trust certificates of certain of the merging companies in exchange for their stock which would be cancelled in the merger and consolidation (R. 20; Exhibit 3-C, R. 41; Exhibit 6-F, R. 81). In addition the plan required the taxpayer to issue a relatively small amount of Consolidated Mortgage Bonds to holders of First Mortgage Bonds of two of the merging companies in exchange for their old bonds (R. 20, 21).

Pursuant to the Plan and the Agreement of Consolidation and Merger the taxpayer was incorporated on January 1, 1940 (R. 25). As required by the Plan of Reorganization, the taxpayer on January 29, 1940, issued its Consolidated Mortgage Bonds which were dated January 1, 1939 (R. 25). When the taxpayer opened its books as of January 1, 1940, it set up as a liability the interest due on the 1939 coupons in accordance with the provisions of the bonds (R. 27, 28). On January 29, 1940, and June 28, 1940, the taxpayer redeemed these interest coupons (R. 29, 30).

By letter dated September 23, 1940, the petitioner (who will be referred to in this Brief as the Commis-

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sioner) ruled that the payments on the 1939 interest coupons were "interest on an outstanding obligation", and accordingly instructed the taxpayer that ownership certificates were required and that it should withhold income tax in the case of nonresident alien bondholders (R. 32; Exhibit 15, R. 90).

In its Federal income tax return for the calendar year 1940 the taxpayer claimed a deduction for this interest paid in 1940 as interest accrued in 1940 (R. 32). The taxpayer had a loss for the calendar year 1940 which it carried over to the calendar year 1942 as a net operating loss deduction in accordance with the provisions of the Internal Revenue Code (R. 32). The Commissioner disallowed the deduction for accrued interest in computing the net operating loss for 1940 to be carried over to 1942 (R. 32).

QUESTION 2.

The period for assessment of additional tax with respect to the year 1940 expired not later than August 15, 1944 (R. 32). The Commissioner examined the taxpayer's return for the year 1940 and advised it on January 19, 1943, that he would accept the return as filed (R. 34). Thereafter, no redetermination of the taxpayer's liability was made until the deficiency notice in this proceeding was mailed on October 8, 1945.

In both the Tax Court and the Court of Appeals the taxpayer contended, in the alternative, that the Commissioner was obliged to recognize the deduction claimed because the deduction was allowed within the meaning of Section 122 of the Code since the Commissioner had failed to challenge it in time. In view of their decision for the taxpayer on the first question, neither the Tax Court nor the Court of Appeals passed upon this alternative contention.

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SUMMARY OF ARGUMENT.

I.

The payments in question constituted interest as that term is commonly understood in the business community. The interest accrued during the taxable year on the taxpayer's indebtedness. The payments thus precisely meet the requirements of the Internal Revenue Code and are, therefore, deductible.

II.

The Commissioner allowed the deduction of the payments in question. He did not thereafter move to disallow them within the statutory period granted him to do so. Having allowed the deduction for the year in which it was taken on the taxpayer's return, the Commissioner is required by the Internal Revenue Code to recognize the deduction in computing the taxpayer's net operating loss to be carried over to a subsequent year. The present attempt to disallow the deduction comes too late.

ARGUMENT.

I. The Amounts Paid by the Taxpayer in Redemption of Interest Coupons for 1939 on Its Consolidated Mortgage Bonds Constituted Interest on Indebtedness Which Accrued in 1940 and Which was Therefore Deductible From Gross Income for that Year.

The Commissioner has challenged the taxpayer's right to a deduction under Section 23(b) of the Internal Revenue Code. This section permits a taxpayer to deduct all interest paid or accrued within the taxable year on indebtedness.[1]

[1] Section 23(b) excepts interest on indebtedness incurred or continued to purchase or carry tax free interest obligations. This exception and the requirement of payment are eliminated from consideration in this case because it was stipulated that the indebtedness involved was not incurred or continued for the excepted purpose and the taxpayer is on the accrual basis (R. 14, 3).

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Section 23(b) requires the taxpayer to show onl that:

1. The Consolidated Mortgage Bonds constitute i debtedness,

2. The payments which the taxpayer made const tuted interest, and

3. Such interest accrued in 1940.

The Tax Court and the Court of Appeals held tha the payments in this case satisfied the requirements Section 23(b) and were, therefore, properly deducted b the taxpayer. This conclusion is in accord with all th decided cases on the subject save one.[2]

1. *Indebtedness.*

The Commissioner apparently recognizes that th taxpayer's Consolidated Mortgage Bonds constitute i debtedness. The bonds were validly issued (R. 25); the represent the taxpayer's unconditional obligation to pa a fixed sum at a specified maturity date;[3] and they a secured by a mortgage on all the taxpayer's propert subject only to the encumbrances of certain enumerate prior liens (R. 26). The bonds unquestionably const tute indebtedness of the taxpayer.

2. *Interest.*

The facts in this case conclusively show that th payments in question constituted interest and hen satisfied the second requirement of the statute. The pla of reorganization (R. 48), the bonds themselves (R. 81 and the coupons in redemption of which the payment were made (R. 88), all required the payment of th amounts as interest.

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[2] See pp. 8-13, *infra.*

[3] See Exhibit 6-F (Form of Consolidated Mortgage Bond and Coupons R. 81.

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Interest has been defined by this Court as: "the amount which one has contracted to pay for the use of borrowed money • • • In the common understanding 'interest' means what is usually called interest by those who pay and those who receive the amount so denominated in bond and coupon."[4] It is manifest from the facts in this case that this is precisely what the payments were. Plainly they were amounts paid for the use of borrowed money as that term is understood in the business community.

It is immaterial that the indebtedness was not outstanding during the interest period. Likewise, neither the rate nor the amount of interest accrued during the taxable year is material. The statute imposes no such limitations.[5]

That the payments were uniformly regarded as interest is perhaps most strikingly evidenced by the fact that the Commissioner himself held that they were interest. In advising the taxpayer that it was required to withhold income tax on payments made to nonresident alien bondholders, the Commissioner said:

> "The distribution under consideration in the instant case is held to represent a payment of interest on an outstanding obligation" (R. 91).

It is difficult to understand the reason for the Commissioner's present contention to the contrary. The facts have not changed any since he issued his ruling. If the payments were interest then, as the Commissioner said they were, they are now. It is impossible to perceive what change could take place in the nature of the payments at the moment when they passed from the taxpayer's hands into the hands of the bondholders that would cause them to assume a character different in the hands of the latter

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[4] *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552, 560-561.

[5] *The Ernst Kern Co.*, 1 T. C. 249 (1942), Acq. on present issue, 1944 C. B. 16; *Commissioner* v. *Pressed Steel Car Co.*, 152 F. 2d 280 (C. A. 3, 1945), affirming T. C. Memo Dec., CCH Dec. 14,100 (M).

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than in the hands of the taxpayer. Manifestly the payments were what all parties, including the Commissioner, recognized them to be—interest, both to the taxpayer as payor and to the bondholders as recipients. The Commissioner has not shown that he refunded any tax paid on the interest by the bondholders who received it.

3. *Accrual.*

The third requirement of Section 23(b) relates to accrual within the taxable year 1940. This requirement is obviously met. The taxpayer did not come into existence until 1940. Therefore, its interest obligation could not have accrued before then. "Inherent in the accrual of an obligation is the existence of an obligor."[6] The obligation to pay the interest in this case could not arise before the taxpayer came into existence and undertook to pay it. This occurred in 1940. Since the taxpayer "did not come into existence until 1940, did not issue its bonds until 1940, did not exchange them with the depositing security-holders in the reorganization proceedings until 1940, and did not actually undertake any liability until all these things had taken place, it was impossible for the interest to accrue prior to 1940".[7] Any other conclusion is a plain contradiction in terms. When these events occurred, the interest accrued.

The foregoing conclusions are fully supported by the cases which, with one exception not since followed, have uniformly held that such payments constitute deductible interest.

This question first arose in *Commissioner* v. *Columbia River Paper Mills.*[8] In this case the taxpayer had preferred stock outstanding on which there were dividend arrearages. On August 1, 1937, the taxpayer offered to exchange income bonds bearing interest from July 1, 1937,

[6] Opinion of the Tax Court (R. 37).

[7] Opinion of the Tax Court (R. 37).

[8] 126 F. (2d) 1009 (C. A. 9, 1942), affirming 43 B. T. A. 104.

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for its preferred stock. About half of the preferred stockholders accepted the offer and exchanged their stock for bonds. The taxpayer, which kept its books of account and filed its tax returns on the accrual basis, deducted in its tax return for 1937 accrued interest for the full six months from July 1, 1937 to December 31, 1937, upon the outstanding bonds so exchanged. The Commissioner disallowed the deduction to the extent that it represented interest for the period prior to the date when the bonds were issued, contending that interest upon the bonds for the period prior to their issuance was not deductible, since it constituted an addition to the purchase price paid for the stock.

The Board of Tax Appeals held that the taxpayer was entitled to deduct the interest for the full six months' period and was affirmed by the Circuit Court of Appeals for the Ninth Circuit. The Circuit Court said:

> "• • • The situation is one where the parties to the transaction, being free to contract, have agreed on the one hand to pay, and on the other hand to accept, a definitely ascertainable sum as compensation for the use of money over a stated period of time.
>
> "There is no occasion for placing a strained construction upon the statute, or for subjecting this simple agreement to an accountant's interpretation. As said in *Old Colony Railroad Company* v. *Commissioner*, 284 U. S. 552, 561, 'we think that in the common understanding "interest" means what is usually called interest by those who pay and those who receive the amount so denominated in bond and coupon, and that the words of the Statute permit the deduction of that sum, and do not refer to some esoteric concept derived from subtle and theoretic analysis'."

In *Oregon Pulp & Paper Co.*[9] which involved facts substantially similar to those of the present case, the

[9] 47 BTA 772 (1942), petition for review dismissed (C. A. 9) November 2, 1943.

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Board again held that the taxpayer was entitled to a deduction for accrued interest. In this case the taxpayer, on December 1, 1936, adopted a plan under which it offered to exchange its income bonds dated February 1, 1936, and bearing interest from that date for outstanding preferred stock. Pursuant to the plan, the taxpayer exchanged a certain number of bonds for preferred stock between December 21 and December 31, 1936. On its 1936 tax return the taxpayer, which was on the accrual basis, claimed a deduction for accrued interest on the bonds for the full period from February 1, 1936, to the end of the year. Further exchanges were made during 1937 and the taxpayer on its 1937 return claimed a deduction for interest accrued on bonds outstanding on December 31, 1937. This included interest for the period from February 1, 1936 to December 31, 1936, as well as interest for 1937 in the case of those bonds which had been issued in 1937. The Commissioner disallowed the deductions in both years to the extent that they included amounts covering a period prior to the issuance of the bonds. The Board followed its earlier decision in *Columbia River Paper Mills, supra*, and held that the taxpayer was entitled to deduct in each year the full amount of interest claimed.

It will be noted that in the *Oregon Pulp & Paper* case the Board held that the taxpayer was entitled to deduct *in 1937* interest for the period from February 1, 1936 to December 31, 1936, on bonds issued in 1937 and also interest for 1937 on such bonds. In this respect the case is identical with the present case.

The next case which arose on this subject was *The Ernst Kern Co.*[10] In the *Kern* case the taxpayer and its affiliate had been in financial straits for several years, during which time continuous efforts were being made to readjust their finances. These efforts culminated in a plan of readjustment presented by a bondholders' committee on September 19, 1934, which, after consideration, was

[10] 1 T. C. 249 (1942), Acq. on present issue, 1944 C. B. 16.

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approved by the Michigan Public Trust Commission on October 4, 1934. The plan was consummated and became operative on February 21, 1935, and pursuant thereto readjustments were consummated on that date, effective as of August 1, 1934. One of the readjustments involved the issuance of the taxpayer's ten year 5% debentures (together with preferred and common stock) in exchange for leasehold bonds of the taxpayer's affiliate which were cancelled. These debentures were dated August 1, 1934, and bore interest from that date.

The taxpayer, whose fiscal year ended January 31, kept its books and filed its tax returns on the accrual basis. In its tax return for the fiscal year ending January 31, 1936, the taxpayer deducted accrued interest on its 5% debentures for the period from August 1, 1934 to January 31, 1935. The Commissioner disallowed this deduction on the ground that it constituted part of the purchase price of the properties acquired from the affiliate.

The Tax Court held that the debentures constituted an indebtedness of the petitioner, and the amount paid thereon for the period from August 1, 1934 to January 31, 1935, was interest within the meaning of the statute and was therefore deductible. The Court said:

> "• • • The liability [for interest] accrued on February 21, 1935, [the date the bonds were issued] and within the taxable year. The statute does not require that the indebtedness upon which interest has accrued and become a liability of the taxpayer must be outstanding during the entire interest accrual period."

It will be observed that the Tax Court held in the *Kern* case that the interest accrued on the date when the readjustments under the plan were consummated and the bonds issued. This is precisely in accord with the taxpayer's contention in the present case. Here the interest

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in question accrued in 1940 when the taxpayer came into existence and the bonds were issued.

In *Commissioner* v. *Pressed Steel Car Co.*[11] the taxpayer was incorporated on July 24, 1936, and commenced operation as a going concern on July 29, 1936. On June 13, 1934, the taxpayer's predecessor company filed a petition under Section 77B of the Bankruptcy Act. The bankruptcy proceedings culminated in a plan of reorganization which was confirmed by the District Court on July 27, 1936. This plan provided that the taxpayer should issue its debentures dated January 1, 1936, and bearing interest from that date, in exchange for the assets of the predecessor company. On July 29, 1936, the taxpayer issued its debentures pursuant to the plan. The taxpayer, which reported on the accrual basis, deducted a full year's interest on the bonds in its tax return for 1936. The Commissioner disallowed interest from January 1, 1936, until July 29, 1936, when the bonds were issued, on the grounds that it represented a part of the purchase price.

The Tax Court, in accord with its earlier decisions, held that the taxpayer was entitled to deduct interest for the entire calendar year 1936. The Court of Appeals affirmed the Tax Court in a *per curiam* opinion.

The Tax Court said:

> "The obligation was the petitioner's own and it promised to pay interest as such on its debentures from January 1, 1936. Such interest accrued when the petitioner undertook the liability to pay it. It is immaterial at what rate the interest was computed or what its aggregate amount was during 1936. The petitioner agreed to pay it and properly accrued it on its books."

The foregoing language is particularly pertinent in the present case. Just as in the *Pressed Steel Car* case so in the present case did the interest accrue when the

[11] 152 F. 2d 280 (C. A. 3, 1945), affirming T. C. Memo Dec., CCH Dec. 14, 100 (M).

taxpayer undertook the liability to pay it which, as has been pointed out, could, under no circumstances, have been earlier than January 1, 1940, when the taxpayer came into existence and was legally capable of contracting obligations.

The only decision not in full accord with all the other decided cases on this point is *Commissioner* v. *Drovers Journal Publishing Co.*[12] The taxpayer submits that to the extent that the *Drovers Journal* case reached a contrary result it is wrong in principle. Both the Tax Court and the Court of Appeals for the Third Circuit have expressly refused to follow it.[13]

Both on principle and under the decided cases, the taxpayer is clearly entitled to the deduction claimed for interest accrued in 1940 on its Consolidated Mortgage Bonds.

II. Reply to the Commissioner's Argument.

A. *The Payments in Question Were Payments of Interest and Not Part of the Purchase Price.*

The Commissioner rests his case principally upon the contention that the payments in question were not interest. This, he says, is so because interest is compensation for the use of borrowed money. The taxpayer borrowed no money in 1939. Thus the payments could not have been compensation for the use of money in 1939 and are, therefore, not interest.

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[12] 135 F. 2d 276 (C. A. 7, 1943), reversing B. T. A. Memo. Dec., CCH Dec. 12,521-C.

[13] The Tax Court refused to follow the *Drovers Journal* case in the *Pressed Steel Car* case (*supra*, p. 12), saying:

> "The respondent relies on *Commissioner* v. *Drovers Journal Publishing Co.*, 135 Fed. (2d) 276. In that case the Circuit Court of Appeals for the [Seventh] Circuit reversed our memorandum opinion which was consistent with our decisions in the above cited cases. With due respect to that Court, we reaffirm our position and hold that the interest in the sum of $216,560.98 is deductible."

In the present case the Tax Court said that "we respectfully decline to follow" the *Drovers Journal* case (R. 36). The Court of Appeals, in its opinion affirming the Tax Court, acknowledged that the *Drovers Journal* case represented a contrary holding (R. 99).

The answer to this contention is plain. The statute does not require that the sums in question be paid for the use of money in 1939.[14]

The definition of interest requires only that the sum in question be compensation for the use of money. The rate of compensation or the period for which it is paid is not part of the definition. These are simply the arithmetical means by which the amount of compensation is determined. Thus, the fact that no money was borrowed and used in 1939 does not prove that the payments were not interest. This fact is immaterial. To show that the payments were not interest the Commissioner must go further and show that they were not compensation for the use of money at any time. This he fails to do because the facts plainly show that the payments were compensation for the use of money.

The Commissioner cites a number of cases which he claims support the conclusion that the payments in the present case were part of the cost of assets and not interest.[15] An analysis of these cases shows that they were all wholly dissimilar to the present case. They involved either instances where there was no indebtedness (in some of which the payments were not even denominated or intended by the parties to be interest)[16] or

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[14] *The Ernst Kern Co.*, 1 T. C. 249 (1942), where the Tax Court said: "* * * The liability [for interest] accrued on February 21, 1935, [the date the bonds were issued] and within the taxable year. The statute does not require that the indebtedness upon which interest has accrued and become a liability of the taxpayer must be outstanding during the entire interest accrual period."

[15] Brief for Petitioner, p. 15.

[16] In fact, this group of cases supports the taxpayer's contention rather than the Commissioner's. In these cases the taxpayers contended that although the payments were not stated by the parties to be interest, they were nevertheless the "same as" interest and hence should be deductible. The courts uniformly rejected this argument of equivalence. The payments were not in fact interest; that they may have been the "same as" interest does not make them deductible. In the present case it is the Commissioner who makes the argument of equivalence. The payments here were intended to be, and were, interest. Nevertheless, the Commissioner says they were the "same as" a part of the cost of the assets and hence are non-deductible. The cases he cites afford no support for this contention.

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instances where the payments were made in satisfaction of the obligation of a third party.

It is apparent that they have no relevancy to the present case. There was a valid indebtedness. The payments were stated to be interest and were intended to be such by the parties. Such interest was not paid by the taxpayer in satisfaction of the obligation of a third party. The taxpayer was satisfying its own obligation—and only its obligation—when it paid the interest. Indeed, as the Commissioner himself concedes,[17] the equity owners who received the Consolidated Mortgage Bonds held no obligations which the taxpayer could have assumed.

The present case must be sharply distinguished from cases involving the payment of third party obligations.[18] In those cases it has uniformly been held that interest accrued on an obligation assumed by a taxpayer is not deductible because it is not interest on the taxpayer's indebtedness. The present case does not involve the assumption of a liability. The interest paid in this case was paid on the taxpayer's own indebtedness.

The Commissioner speculates that the bankruptcy court must have considered the 1939 coupons as part of the cost of acquiring the assets.[19] He purports to find support for this speculation in the treatment of the Darby and Doylestown bondholders.[20] It is plain that the dis-

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17 Brief for Petitioner, p. 21.

18 For example, *Rodney, Inc.* v. *Commissioner*, 145 F. 2d 692 (C. A. 2, 1944) and *Medical Building of Houston*, 2 T. C. M. 1001 (1943). In the same category, although not interest cases, are *Magruder* v. *Supplee*, 316 U. S. 394 (1942) and *Commissioner* v. *Lincoln-Boyle Ice Co.*, 93 F. 2d 26 (C. A. 7, 1937). All of these cases are cited at pp. 15 and 16 of the Petitioner's Brief.

19 Brief for Petitioner, p. 22.

20 The Commissioner places much emphasis on the Darby and Doylestown bonds and suggests that the treatment of the interest on these bonds (less than 2% of the whole issue), as to which a different factual situation admittedly existed, should control the disposition of the case with respect to the other 98%. The facts were fully presented to the Tax Court and the Court of Appeals but they did not discuss the Darby and Doylestown bonds separately in their opinions, presumably considering that the $8,946 fixed interest involved in the case of these bonds and the $500 adjusting item were not sufficiently important to warrant special discussion or treatment and should not be allowed to becloud the main issue of the case.

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position of the Darby and Doylestown bondholders affords no basis for such a conclusion. These bonds comprised some $596,000 out of a total of over $32,000,000 issued—less than 2%. The interest paid on them was simply an adjusting item. Furthermore, the fact that a small group of security-holders, pursuant to the plan of reorganization and the orders of the bankruptcy court carrying it into effect, received less interest from taxpayer than others, in no way demonstrates that the interest was part of the cost of assets acquired.

The Commissioner also points to the computation of income interest as evidence of the fact that such interest was "really the cost of assets added to the receivership estate by the 1939 operations of the predecessor."[21] The Commissioner bases this conclusion upon the fact that the report showed that an amount substantially equal to the interest paid remained after payment of other obligations. The report of necessity must have shown this or else an improper amount of income interest was paid. The report was the purely hypothetical reconstruction of 1939 operations made necessary by the plan to show what the results would have been if the plan of reorganization had in fact been in effect one year earlier.[22] It did not reflect the actual results of operations and hence could not show what assets were added to the receivership estate by the 1939 operations. Indeed, the actual operations during that year necessarily produced at least 37% less than the Commissioner accounts for, namely, the $700,000 payment in 1939 pursuant to court order to

[21] Brief for Petitioner, p. 22.

The Commissioner refers frequently to the "predecessor" and the "operations of the predecessor". This is inaccurate. In fact there were 65 predecessors which were merged and consolidated to form the taxpayer.

[22] R. 10, Exhibit 9-I.

stockholders of lessor companies.[23] Furthermore, when consideration is given to the Commissioner's own determination of recognized depreciation,[24] it is manifest that there was no enhancement in the receivership estate in that year.

On reason the Commissioner's argument that the payments were part of the cost of the assets and hence non-deductible is unsound. The Commissioner regards the words "cost of assets" as a sort of magic touchstone. However, it is plain that the payment of the interest coupons for 1939 could not be part of the cost of the assets if that phrase be taken to mean a condition to the acquisition of title to the assets by the taxpayer.[25] The taxpayer's title to the assets was perfected without regard to the payment of the 1939 coupons—or the coupons for any subsequent year. True, non-payment of the 1939 coupons would have constituted an actionable default and may have ultimately lead to the loss of title by the tax-

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[23] R. 30; Exhibit Q (Reorganization Record) at p. 10054.

The Commissioner also thinks it significant that the regulations of the Pennsylvania Public Utility Commission did not permit the payments to be deducted as expenses. On the contrary the accounting regulations of the Public Utility Commission, which are designed to supply statistical data in aid of regulation and rate making, have no significance here. It was long ago settled that the accounting requirements of federal or state regulatory bodies are not determinative of federal tax liability. (See, for example, *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552.)

[24] R. 16, Exhibit 12-L, p. 2.

[25] It should be observed that the Commissioner regards the $2,200,000 cash paid pursuant to the plan of reorganization as a part of the cost of the assets to *the taxpayer*. This conclusion would seem to be erroneous. The cash was a part of the receivership assets which was not to be acquired by the taxpayer, and was no different than other assets of the predecessors which, under the plan, were not taken over by the taxpayer (R. 42). This is made plain by Section 5 of the plan of reorganization which, after stating the cash payments to be made to exchanging security-holders, provided that "The *balance* of cash in the [predecessor operating company's] treasury will be turned into the treasury of [the taxpayer] and shall be applicable to its corporate purposes * * *" (R. 53, Exhibit 3-C). The taxpayer simply acted as a disbursing agent to distribute the cash in the receivership estate which was not acquired by it under the plan of reorganization.

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payer—as would default in the payment of the coupons for any other year. But the taxpayer's acquisition of the assets was not dependent upon the payment of the interest in question. If, then, the taxpayer acquired the assets without regard to the payment of the interest in question, manifestly such payment was not a part of the cost of the assets.

On the other hand, if a more general meaning is ascribed to the phrase "cost of assets", it is at once evident that the payments in question likewise do not fall within such broadened definition. The 1939 coupons are no different than those for the succeeding ninety-nine years of the bonds. The bonds, and the interest coupons affixed to them, for 1939 and later years alike, are in fact all part of the obligations imposed on the taxpayer as the price of emerging from the reorganization as a going concern. But no one suggests that this means that the interest for 1940 and later years is not deductible because part of the cost of the assets. Why then should the 1939 coupons be treated differently? The coupons are all the same and must be treated the same.

The real vice in the Commissioner's argument is that it seeks to make the determination of the question of interest turn not on the intrinsic nature of the payment in question, but rather on the motive of those responsible for establishing the liability to make the payment.[26] The law of federal income taxation is sufficiently complicated without adding this refinement. The Commissioner admits that the test of whether the payment is interest is

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[26] The function of the 1939 coupons, according to the Commissioner's speculation, was to maintain the relative priority of the claimants during the period between the date of the Plan and the date of its consummation (Brief for Petitioner, p. 20). That this cannot be so is demonstrated by the fact that the stockholders of the lessor companies received not only the full payment in redemption of their 1939 coupons, but in addition a $700,000 interim payment (R. 11) which they would not have received had the plan been consummated on January 1, 1939.

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whether it is "the amount which one has contracted to pay for the use of borrowed money",[27] but instead of looking to the contract between the taxpayer and its bondholders in order to measure the interest in question by this definition, the Commissioner, contrary to his own definition, embarks upon an inquiry as to *why* the 1939 coupons were affixed to the bonds. This is essentially the same line of reasoning as the Commissioner unsuccessfully advanced in the *Old Colony Railroad Co.* case[28] where he argued that a portion of interest which the taxpayer paid on bonds issued at a premium was not really interest but was a partial return of the premium. Hence, according to the Commissioner, only the "effective" rate of interest was deductible for tax purposes. The portion representing return of premium was not deductible because it was not interest.

This Court rejected this inquiry into the nature of the interest and the motive of the person paying it.

The Court said:

> "And as respects 'interest,' the usual import of the term is the amount which one has contracted to pay for the use of borrowed money. He who pays and he who receives payment of the stipulated amount conceives that the whole is interest. In the ordinary affairs of life no one stops for refined analysis of the nature of a premium, or considers that the periodic payment universally called 'interest' is in part something wholly distinct—that is, a return of borrowed capital. It has remained for the theory of accounting to point out this refinement. We cannot believe that Congress used the word having in mind any concept other than the usual, ordinary and everyday meaning of the term, or that it was acquainted with the accountants' phrase 'effective rate'

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[27] Brief for Petitioner, p. 13.

[28] 284 U. S. 552.

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of interest and intended that as the measure of the permitted deduction.

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"In short, we think that in the common understanding 'interest' means what is usually called interest by those who pay and those who receive the amount so denominated in bond and coupon, and that the words of the statute permit the deduction of that sum, and do not refer to some esoteric concept derived from subtle and theoretic analysis."

B. *Essentially the Same Deduction Was Not Taken Successively By Two Companies.*

The Commissioner urges that the decision of the Court of Appeals is wrong because it "permitted essentially the same deduction" to be taken twice.[29]

First, it should be pointed out that it is only the Commissioner's conclusion that the deductions are "essentially the same". The record does not show that they are. But passing this, the short answer to the Commissioner's argument is that the deduction was not twice allowed.

The Revenue Agent who examined the 1939 income tax return of Philadelphia Rapid Transit Company[30] disallowed the deduction for accrued rentals (R. 15, 16). However, the depreciation claimed by Philadelphia Rapid Transit on its return was less than the amount allowable. Upon being advised of the Revenue Agent's disallowance of the deduction for accrued rentals, the company claimed the full allowable depreciation. After the allowance of such depreciation a net loss remained even with the disallowance of the accrued rentals, and the disallowance of the Darby and Doylestown interest would not change this

[29] Brief for Petitioner, p. 23.

[30] One of the taxpayer's 65 predecessors.

result. The Commissioner, therefore, assessed no additional tax.[31]

The Commissioner suggests that the Revenue Agent was wrong in disallowing the claimed deductions and cites I. T. 3635 in support of this view.[32]

It is plain that this ruling does not support the Commissioner's conclusion. In the case there presented the plan of reorganization had not even been approved by the interested parties and there was no certainty that it would be. Accordingly, it was ruled that deduction of an item accruing under such circumstances was proper because the contingency involved was insufficient to prevent the accrual.

The present case, on the contrary, goes beyond even the question of reasonable certainty of non-payment. It was a known fact that the amounts claimed as rentals would not be paid. The plan of reorganization had been approved and was carried into effect.

The Commissioner's fear that "a similar opportunity for double deductions would arise whenever there is a reorganization"[33] is groundless. No such opportunity was present in this case. And certain it is that no tax benefit was had.

C. *The Taxpayer May Deduct Two Years' Interest in One Year Because Two Years' Interest Accrued in One Year.*

The Commissioner objects that under the holding of the Court of Appeals the taxpayer was permitted to ac-

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[31] The net income as determined by the revenue agent after disallowance of the accrued rentals (and certain other adjustments) was $1,155,152.09 (R. 16). This would have resulted in a tax deficiency of $190,558.26 (R. 15). However, it was determined by the Commissioner that $1,252,363.60 depreciation was allowable in addition to that claimed on the return. This left "a * * * net loss of $97,211.51 and no tax liability" (R. 16, Exhibit 12-L, p. 2).

[32] Brief for Petitioner, p. 24.

[33] Brief for Petitioner, p. 24.

crue the liability for two years interest in one year. This, he says, violates the rule that interest "accrues ratably with the passage of time."[34]

B. F. Goodrich Co.,[35] in which the Commissioner has acquiesced and one of the cases which the Commissioner cites as establishing the rule, is a pertinent illustration of the fact that this rule, like most rules, has its exceptions. There the taxpayer in December, 1936, called its bonds for payment on February 1, 1937. The bondholders were permitted to surrender their bonds in advance of the call date and receive immediate payment in full of principal, premium and interest to February 1, 1937. Most of the bonds were surrendered on these terms prior to the end of 1936. The Tax Court held that the taxpayer was entitled to deduct in 1936 not only the interest which accrued in the normal course in 1936 but also the interest paid in 1936 which would not have accrued until 1937 but for the earlier surrender of the bonds. The Tax Court stated:

> "The debtor-creditor relationship between the petitioner and the holders of the $10,600,000 face amount of bonds ceased in 1936, the period of the loan was terminated, and interest could not thereafter accrue in regard to that particular part of this indebtedness. *The rule that interest accrues ratably is not to be carried to the extreme of having the accrual continue after the debt has been paid and canceled.*" (Emphasis supplied.)

Just as the facts of the *Goodrich* case warranted the taxpayer there in deducting interest other than on a ratable basis, so in the case at bar the rules of tax accounting required the taxpayer to deduct the interest in

[34] Brief for Petitioner, pp. 25-26.

[35] 1 T. C. 1098 (1943), Acq. 1943 C. B. 10.

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the year in which it accrued. The Commissioner points to Section 43 of the Internal Revenue Code[36] in this connection as preventing the accrual in one year of more than a single year's interest. Precisely the contrary is true. Section 43 required the taxpayer in this case to deduct both 1939 and 1940 interest in 1940, because the interest for both years accrued in 1940.

Section 43 has no bearing upon the substantive question of *when* a liability accrues. It merely requires that deductions "shall be taken for the taxable year in which 'paid or accrued' • • • unless in order to clearly reflect the income the deductions or credits should be taken as of a different period • • •."

In *Security Flour Mills Company* v. *Commissioner*,[37] this Court said that the "uniform result [of the application of Section 43] has been denial both to government and to taxpayer of the privilege of allocating income or outgo to a year other than the year of actual receipt or payment, or, applying the accrual basis, the year in which the right to receive, or the obligation to pay, has become final and definite in amount." The Court observed that the exception in Section 43 "was not intended to upset the well understood and consistently applied doctrine that cash receipts or matured accounts due on the one hand, and cash payments or accrued definite obligations on the other, should not be taken out of the annual accounting system and, for the benefit of the government or the taxpayer, treated on a basis which is neither a cash basis nor an accrual basis, because so to do would, in a given instance, work a supposedly more equitable result to the government or to the taxpayer".

Under these principles the interest payments in this case were deductible in 1940 and in 1940 alone, for, as was said by the Supreme Court in *Dixie Pine Products*

[36] App., *infra*, p. 33.

[37] 321 U. S. 281 (1944).

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Co. v. Commissioner,[38] it "has never been questioned that a taxpayer who accounts on the accrual basis may, and should, deduct from gross income a liability which really accrues in the taxable year." The interest accrued in 1940 and therefore, consistent with the Internal Revenue Code, the cases and the Commissioner's own Regulations, should be deducted in 1940.[39]

That some other interest also accrued in the same year is no reason for abandoning the system of annual periods of computation which requires the deduction of expenses in the year of accrual. Here the obligation to pay the interest accrued in 1940. 1940 was, therefore, the proper year to deduct it. Congress did not intend "to substitute, whenever in the discretion of an administrative officer or tribunal such a course would seem proper, a divided and inconsistent method of accounting not properly to be denominated either a cash or an accrual system." *Security Flour Mills Company* v. *Commissioner, supra,* at page 287.

The situation resulting from compliance with Section 43 in the present case is not anomalous. Taxable income varies from accounting income.[40]. Items of income or expense of an annually recurring nature may be doubled up where on a particular set of facts the principles of income tax reporting so require. To give an example, it is permissible for a taxpayer to deduct in a single year state excise taxes covering a two year period where

[38] 320 U. S. 516 (1944).

[39] Similarly, since the interest accrued as a liability in 1940, it should be deducted in that year under the rule that "the liabilities of one year cannot be used to reduce the income of a subsequent year" (Reg. 111, Sec. 29.43-2). Under the Commissioner's Regulations it would be improper to deduct the interest in any year other than 1940.

[40] It has been said, and truly, that "good accounting practice may frequently lead to a different net income than that which is taxable under the income tax statutes." 2 Mertens, *Law of Federal Income Taxation,* p. 121.

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the liability for both years' taxes attaches in the year of deduction.[41] This situation arises where a taxing statute is given retroactive effect.

A doubling up may similarly occur where a taxpayer contests liability for such a tax. Since he cannot deduct the amount of the tax so long as he is contesting liability, it may result in his deducting several years taxes in one year if and when his liability is established.[42]

Again, where a lessor on the accrual basis receives an advance payment of rent attributable to some future period he is required to report it as income when received[43] regardless of the fact that it will result in a doubling up of rental income for that year.

The Commissioner charges the taxpayer with inconsistency in that "while it deducted the accrued liability for both the 1939 and 1940 coupons on the consolidated mortgage bonds, it did not assert a similar, double deduction with respect to the interest on the first mortgage bonds; instead it only deducted the accrued liability for the 1940 interest on those bonds."[44] Passing the immateriality of the alleged inconsistency,[45] the explanation is simple: the taxpayer did not deduct 1939 interest on the first mortgage bonds for the reason that the bonds were issued without the coupons for 1939 interest attached.[46] The taxpayer never undertook to pay 1939 interest on these bonds, with the result that there was no 1939 interest to deduct.

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41 *Van Norman Co.* v. *Welch*, 141 F. 2d 99 (C. A. 1, 1944.)

42 *Dixie Pine Products Co.* v. *Commissioner*, 320 U. S. 516 (1944).

43 *Astor Holding Co.* v. *Commissioner*, 135 F. 2d 47 (C. A. 1, 1943).

44 Brief for Petitioner, p. 27.

45 The taxpayer's failure to avail itself of a deduction to which it might or might not be entitled could not under any reasoning constitute a ground for denying it the interest deduction which it is claiming in the present case. There is no element of election involved.

46 See Exhibit Q (Reorganization Record) at p. 10685.

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D. *The Payments Were Interest, But Not Prepaid Interest.*

The Commissioner next contends that even if the interest in question was in fact "interest" within the meaning of the Internal Revenue Code, it constituted a "partial prepayment of interest" and as such had to be deducted ratably over the entire period of the obligation.[47] This contention is faulty both in its premise and in its conclusion, and it is significant that the Commissioner has not cited a single case involving interest to support it.

In the first place, there was here no prepayment of interest. It is elementary that to "prepay" interest is to pay it before it is due. Here, to the contrary, the fixed interest in question was due immediately upon issuance of the Consolidated Mortgage Bonds in January, 1940, and the income interest was due in July of the same year. If the taxpayer had neglected to pay the interest in 1940 it would have been in default on the bonds.

In a ruling[48] dealing with the proper tax treatment of prepaid interest the Commissioner states:

> "It is held that where a taxpayer keeps books of account and files Federal income tax returns on the cash receipts and disbursements basis, interest paid in advance for a period of five years constitutes an allowable deduction for Federal income tax purposes for the year in which paid, but where the accrual basis of accounting is used in reporting income, interest is deductible for the year in which the liability to pay accrues regardless of when payment is actually made."[49]

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[47] Brief for Petitioner, p. 29.

[48] I. T. 3740, 1945 C. B. 109.

[49] It should be noted that this ruling, in holding that cash basis taxpayers should deduct prepaid interest in the year of payment, is contrary to the Commissioner's assertion in his brief (p. 29) in this case that cash basis taxpayers are required to apportion prepaid interest.

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This language illustrates the fact that the application of the label "prepaid" to the interest payments in this case, even if it were proper to do so, would not improve the Commissioner's position.

The inescapable fact is that the interest was deductible in 1940 the year in which it accrued and in that year only. To quote again the words of this Court,[50] it "has never been questioned that a taxpayer who accounts on the accrual basis may, and should, deduct from gross income a liability which really accrues in the taxable year." The Commissioner's argument to the contrary runs counter to the Internal Revenue Code, to the decisions of this Court, and to his own Regulations.[51]

III. In the Alternative, the Deductions Claimed by the Taxpayer on its 1940 Income Tax Return Were Allowed by the Commissioner and He Therefore Erred in Disregarding Them in Computing the Taxpayer's Income Tax Liability for 1942.

In the alternative, the taxpayer contends that the Commissioner, having previously allowed the deduction for interest claimed on the taxpayer's 1940 income tax return,[52] cannot now disallow the deduction after the period of limitation for assessment of additional tax for 1940 has expired.[53]

The taxpayer's return for 1940 was filed on July 22, 1941, pursuant to an extension of time for filing duly

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[50] In *Dixie Pine Products Co.* v. *Commissioner*, 320 U. S. 516.

[51] See pp. 21-25, *supra*, for an extensive discussion of this point.

[52] And all other deductions claimed on the 1940 return.

[53] Because their decisions were for the taxpayer on the first point neither the Tax Court nor the Court of Appeals discussed this alternative contention which was pressed by the taxpayer in both Courts. Nor did the dissenting judge in the Court of Appeals discuss this argument although a discussion of the second point would appear to be necessary to a complete disposition of the case in view of his opinion against the taxpayer on the first point.

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granted to August 15, 1941. No extensions of the period for assessment of additional tax were filed and the period for such assessment therefore expired not later than August 15, 1944. The Commissioner advised the taxpayer on January 19, 1943, that its 1940 return was accepted as filed (R. 55) and subsequently made no redetermination of the taxpayer's income tax liability for 1940 prior to the expiration of the statutory period. In fact, the Commissioner made no change in the deductions claimed on the taxpayer's 1940 return until the deficiency notice was issued in this proceeding on October 8, 1945.

Section 122 of the Internal Revenue Code[54] permits a taxpayer to equalize his income over a period of years by means of a "net operating loss carry-over". The "net operating loss" which may be carried from one year to another is specifically defined in Section 122(a) of the Code as the "excess of the deductions allowed by this Chapter over the gross income, with the exceptions, additions and limitations provided in subsection (d).[55] Under this statutory definition it follows that, if the deductions claimed by the taxpayer on its 1940 return have been "allowed" within the meaning of Section 122(a), the Commissioner erred in disregarding them in determining the taxpayer's income tax liability for 1942.

The meaning of the word "allowed" as used in this connotation in the Internal Revenue Code has been settled by the decision of this Court in *Virginian Hotel Corporation of Lynchburg* v. *Commissioner*.[56] In the *Virginian Hotel* case, this Court defined the meaning of the word

[54] 53 Stat. 867, as amended Oct. 21, 1942, 56 Stat. 807, 844, 847, 848; 26 U. S. C. A. §122.

[55] The "exceptions, additions and limitations provided in subsection (d)" are not applicable to this case.

[56] 319 U. S. 523 (1943).

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"allowed" as used in a substantially identical section of the Code[57] as follows:

> "• • • 'allowed' connotes a grant. Under our federal tax system there is no machinery for formal allowances of deductions from gross income. Deductions stand if the Commissioner takes no steps to challenge them. Income tax returns entail numerous deductions. If the deductions are not challenged, they certainly are 'allowed' since tax liability is then determined on the basis of the returns. Apart from contested cases, that is indeed the only way in which deductions are 'allowed'."

It, therefore, follows that all deductions claimed by the taxpayer on its 1940 return were allowed within the meaning of Section 122(a) of the Code. The Commissioner accepted the taxpaye-'s income tax return as filed and did not thereafter move to disallow the deductions within the time granted him to do so. Since the deductions were not challenged they were, therefore, allowed. This Court's decision in the *Virginian Hotel* case makes this conclusion inescapable. Hence, when the Commissioner redetermined the taxpayer's 1942 tax liability, he erred in disallowing the deductions claimed by the taxpayer on its 1940 return. Those deductions had already been allowed, and the Commissioner was obliged by Section 122(a) to recognize them in computing the net operating loss of the taxpayer to be

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[57] Section 113(b)(1)(B), which was involved in the *Virginian Hotel* case provides:

"(1) GENERAL RULE.—Proper adjustment in respect of the property shall in all cases be made—

"(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent *allowed* (but not less than the amount allowable) *under this chapter* or prior income tax laws. • • •." (Emphasis supplied.)

Section 122(a) involved in the present case provides:

"DEFINITION OF NET OPERATING LOSS. As used in this section, the term 'net operating loss' means the excess of the deductions *allowed by this chapter* over the gross income, with the exceptions, additions, and limitations provided in subsection (d)." (Emphasis supplied.)

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deducted in 1942. His attempt to disallow them came too late.[58]

The Commissioner argues[59] that he is not attempting to assess additional tax for 1940 and he can, therefore, now disallow the deduction claimed in computing the tax for 1942. He says that Section 275 of the Code does not stand in his way. But the critical section is not 275, it is 122. And Section 122 provides that if the deduction in 1940 was allowed, the Commissioner must recognize it in computing the loss carry-over to be deducted in 1942. As has been pointed out above,[60] the deduction was allowed in 1940 because it was not then timely challenged by the Commissioner. Hence he cannot disregard it in 1942.

The Commissioner also relies on *Commissioner* v. *Disston*[61] as authority for his action in the present case. But there is a significant difference between the statutory language involved in the *Disston* case and the present case. In the *Disston* case the gift tax statute under consideration provided for the addition of prior net gifts in computing the gift tax for a subsequent year. The Court held that erroneously computed prior net gifts unchallenged by the Commissioner and now barred by the statute of limitations could be corrected in computing the gift tax for a later year. It will be observed, however, that the statute refers to the addition of prior net gifts, not prior net gifts "allowed". The two cases are, therefore, wholly dissimilar. They would be the same

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[58] The cases cited in the Commissioner's brief at p. 32 against this contention arose under the provisions of earlier Revenue Acts containing no language comparable to that which appears in Section 122(a) of the Internal Revenue Code. In addition, those cases were decided by the Board of Tax Appeals prior to the decision of this Court in the *Virginian Hotel* case.

[59] Brief for Petitioner, p. 30.

[60] *Supra*, p. 29.

[61] 325 U. S. 442 (1945).

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only if the statute in one referred to deductions "allowed" and in the other to prior net gifts "allowed".[62]

CONCLUSION.

The decision of the Court of Appeals is correct and should be affirmed.

The payments in this case were interest on indebtedness which accrued in 1940. They precisely met the requirements of Section 23(b) of the Internal Revenue Code and are, therefore, properly deductible in 1940.

In the alternative, all deductions claimed on the taxpayer's 1940 income tax return were allowed within the meaning of the Internal Revenue Code when the Commissioner accepted the taxpayer's return as filed and did not thereafter challenge the deductions within the time granted him to do so. Since the deductions were allowed, the Commissioner was obliged by Section 122(a) of the Code to recognize them in computing the taxpayer's net operating loss for 1940 to be carried over to 1942.

Respectfully submitted,

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[62] The Commissioner points to nothing in the context of Section 122(a) that suggests that the word "allowed" there used should have any different meaning than that already ascribed to it by this Court.

Section 272(g) of the Code has no bearing on the present case. Whether the deduction has been "allowed" in 1940 is one of the facts which the Tax Court must take into consideration in applying Section 122(a).

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APPENDIX.

Internal Revenue Code:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * * * *

(b) *Interest.*—All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from the taxes imposed by this chapter.

SEC. 43. PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN.

The deductions and credits (other than the corporation dividends paid credit provided in section 27) provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. * * *

SEC. 122. NET OPERATING LOSS DEDUCTIONS.

(a) *Definition of Net Operating Loss.*—As used in this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the exceptions, additions, and limitations provided in subsection (d).

Treasury Regulations 111.

Sec. 29.43-2. *When charges deductible.*—Each year's return, so far as practicable, both as to gross income and deductions therefrom, should be complete in itself, and taxpayers are expected to make every reasonable effort to ascertain the facts necessary to make a correct return. The expenses, liabilities, or deficit of one year cannot be used to reduce the income of a subsequent year. A taxpayer has the right to deduct all authorized allowances, and it follows that if he does not within any year deduct certain of his expenses, losses, interest, taxes, or other charges, he cannot deduct them from the income of the next or any succeeding year. • • •